In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No.

No.

ADOLPH B. SPRECKELS,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE;
Respondent.

PETITION FOR WRITS OF CERTIORARI

and

BRIEF IN SUPPORT THEREOF.

WALTER SLACK,
Balfour Building, San Francisco, California,
Attorney for Petitioner.

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PETITION FOR WRITS OF CERTIORARI.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Your petitioner, Adolph B. Spreckels, hereby petitions for writs of certiorari to the Circuit Court of Appeals for the Ninth Circuit and respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED.

These causes arise in the determination of petitioner's income tax liability for the years 1934 and

1935. The Board of Tax Appeals determined that petitioner in each year was engaged in the business of buying and selling stocks, bonds and commodities for profit and that in computing his income tax he was entitled to deduct selling commissions on such sales as an expense of that business. As to the year 1934, the Board held that there had been no timely claim of the deduction and for that reason only refused to allow it. Petitioner petitioned the Circuit Court of Appeals for the Ninth Circuit for a review of the Board's determination as to the year 1934 (No. 9682). The Commissioner also petitioned that court for a review of the Board's determination that petitioner was entitled to the deduction in 1935 (No. 9687). The Circuit Court of Appeals in a single opinion affirmed the Board's decision as to 1934 and reversed it as to 1935, holding that petitioner was not entitled to deduct selling commissions in determining his income tax liability in either year, refusing, therefore, to consider the propriety of the decision of the Board as to the timeliness of the 1934 claim.

JURISDICTION.

The jurisdiction of this Court is invoked under the provisions of section 1141 of the Internal Revenue Code, (U.S.C. Title 26, section 1141) and section 240 of the Judicial Code, (U.S.C. Title 28, section 347). The date of the judgment of the Circuit Court of Appeals for the Ninth Circuit herein referred to is May 15, 1941. A petition for rehearing by that Court was denied July 28, 1941.

QUESTION PRESENTED.

A single question is presented by this petition, viz: Is one engaged in the business of buying and selling stocks, bonds and commodities for profit entitled, in determining his income tax liability, to deduct commissions necessarily paid by him in connection with such sales?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRITS.

1. The decision of the Circuit Court of Appeals for the Ninth Circuit in the present case is in direct conflict with the decisions of the Circuit Court of Appeals for the Second Circuit in *Winmill v. Commissioner,* 93 Fed. (2d) 494, and *Neuberger v. Commissioner,* 104 Fed. (2d) 649, both holding that selling commissions paid by a trader in securities are deductible. The conflict between the circuits extends also to the Circuit Court of Appeals for the Fifth Circuit, where the Court in *Commissioner v. Covington,* 120 Fed. (2d) 768 reversed the Board of Tax Appeals and held that a trader in commodity futures was not entitled to deduct selling commissions.

2. The question presented is of great importance and arises under all of the Revenue Acts commencing with the Revenue Act of 1932 and including the Revenue Act of 1940. The Board of Tax Appeals, since its decision on petitioner's appeals, has held selling commissions deductible in a number of appeals, several of which are pending on petition for review, one in the

Second Circuit and two in the Third Circuit. The question should be finally determined by this Court.

Appeal of Alice du Pont Ortiz, 42 B.T.A. 173, pending in the Third Circuit;

Appeal of Bernon S. Prentice, decided by the Board December 6, 1940, pending in the Third Circuit;

Appeal of Estate of C. Perry Beadleston, deceased, decided by the Board March 24, 1941, pending in the Second Circuit;

Appeal of Roland L. Taylor, Trustee, 44 B.T.A. No. 61;

Appeal of Ray L. Skofield, decided by the Board May 17, 1941.

Wherefore, petitioner respectfully prays that writs of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and send to this Court full and complete transcripts of the record and all proceedings in the cases entitled and numbered on its docket, Adolph B. Spreckels v. Commissioner of Internal Revenue, No. 9682 and Commissioner of Internal Revenue v. Adolph B. Spreckels, No. 9687, to the end that the said cases may be reviewed and determined by this Court as provided by law, and that petitioner may have such action and further relief in the premises as to this Court may seem proper.

Dated, San Francisco, California,
August 27, 1941.

WALTER SLACK,
Attorney for Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

I.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals is reported in 119 Fed. (2d) 667, and will be found in the Record at pages 52 to 65.* The opinion of the Board of Tax Appeals is reported in 41 B.T.A. 1204, and will be found in the record at pages 22 to 31.

*References are to the record in CCA cause No. 9682.

II.

JURISDICTION.

This Court has jurisdiction to issue the writs prayed for under the provisions of section 1141 of the Internal Revenue Code (U.S.C. Title 26, section 1141) and section 240 of the Judicial Code (U.S.C. Title 28, section 347).

The petition is timely, the judgments of the Circuit Court of Appeals here sought to be reviewed having been entered on May 15, 1941, and petitioner's petition for rehearing having been denied on July 28, 1941. (R. 67.)

The grounds upon which the jurisdiction of this Court is invoked are set out in the petition and are briefly that the Circuit Court of Appeals for the Ninth Circuit having determined that commissions paid on the sales of securities and commodities are not deductible as a business expense, a direct conflict exists with decisions of the Circuit Court of Appeals for the Second Circuit holding that such commissions are deductible and that the question of federal law involved is an important one which should be settled by this Court.

III.

STATEMENT OF THE CASE.

Petitioner, during the years 1934 and 1935, was engaged in the business of purchasing and selling stocks, bonds and commodities for profit. (R. 24.) In due

course he filed his income tax returns for the calendar years 1934 and 1935. Thereafter, the respondent, Commissioner, asserted deficiencies in tax for the two years upon grounds that are not here material. Petitioner filed petitions with the Board of Tax Appeals for redetermination of the asserted deficiencies. All errors raised in the original petitions were disposed of by stipulation prior to trial. At the hearing before the Board, petitioner asked and was granted leave to file amendments to his two petitions alleging that during each calendar year he had paid, in the conduct of his business, selling commissions on sales of stocks, bonds and commodities which he had not taken as deductions in computing his income tax for those years and asserted the right to have those deductions considered in determining his taxable income. (R. 23.) These claims, if conceded, resulted in the overpayment of his income tax for both years.

The two petitions were consolidated for hearing and were disposed of by the Board in a single opinion, although separate decisions were entered. The Board found the facts as above stated and held that the selling commissions were deductible as ordinary and necessary expenses of taxpayer's business, but, as to the year 1934, held that the amendment to the petition having been filed more than three years after the payment of the last installment of tax, a refund based upon the failure to claim a deduction for selling commissions was barred by the statute of limitations. (R. 27-31.)

Petitioner applied to the Circuit Court of Appeals for the Ninth Circuit for a review of the decision entered for 1934, while the Commissioner brought up the decision as to 1935. Both petitions were considered together by the Circuit Court of Appeals, the Court saying:

> "* * * The basic question before this court in each case is identical; only in the event that our conclusion on deductibility is in the taxpayer's favor will it be necessary to consider whether the claim for refund for 1934 was timely filed." (119 Fed. (2d) 669, R. 55.)

The Circuit Court of Appeals disposed of the petitions for review by reversing the decision of the Board for 1935 and by affirming its decision for 1934, "because the claimed additional refund was based upon selling commissions which we hold not deductible as expenses." (119 Fed. (2d) 672, R. 65.)

IV.

SPECIFICATION OF ERRORS.

The errors of the Circuit Court of Appeals relied upon in support of this petition are:

(1) The determination by that court that a person engaged in the business of buying and selling securities and commodities for profit is not entitled to deduct, as an expense of such business, commissions paid on sales;

(2) The failure of the court to consider and determine whether or not the Board of Tax Ap-

peals erred in refusing to give effect to selling commissions paid by petitioner in determining his income tax liability for the year 1934.

V.

ARGUMENT.

A. SELLING COMMISSIONS ARE PROPERLY DEDUCTIBLE AS A BUSINESS EXPENSE BY ONE ENGAGED IN THE BUSINESS OF BUYING AND SELLING SECURITIES AND COMMODITIES.

1. Treasury regulations so provide.

While the language of the Revenue Acts authorizing the deduction of business expenses is general, the Regulations have uniformly included commissions within the scope of the statutory provisions.

The Revenue Act of 1934, applicable to the years here under consideration, provides:

"Sec. 23. **Deductions from Gross Income.**

In computing net income there shall be allowed as deductions:

(a) **Expenses**—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business,

of property to which the taxpayer has not taken or is not taking title or in which he has no equity."

Article 23 (a)-1, Regulations 86, promulgated under the Revenue Act of 1934, expressly includes selling commissions in the definition of business expenses. The article so far as pertinent reads:

"Reg. 86, Art. 23 (a)-1. **Business expenses.**

Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business except the classes of items which are deductible under the provisions of articles 23 (b)-1 to 23 (q)-1. Double deductions are not permitted. Amounts deducted under one provision of the Act can not again be deducted under any other provision of the Act. The cost of goods purchased for resale, with proper adjustment for opening and closing inventories, is deducted from gross sales in computing gross income. (See article 22 (a)-5.) Among the items included in business expenses are management expenses, *commissions*, labor, supplies, incidental repairs, operating expenses of automobiles used in the trade or business, traveling expenses while away from home solely in the pursuit of a trade or business (see article 23 (a)-2), advertising and other *selling expenses*, together with insurance premiums against fire, storm, theft, accident, or other similar losses in the case of a business, and rental for the use of business property." (Italics supplied.)

It will be noted that the article includes *commissions* and *other selling expenses* in the same category. Lan-

guage could scarcely be chosen more clearly expressing the thought that selling commissions are deductible as a business expense. It is claimed by the Commissioner that the general rule announced in the quotation from the Regulations is modified by a subsequent provision, viz.: Article 24-2, relating to capital expenditures, which so far as is material reads:

> "Commissions paid in purchasing securities are a part of the cost price of such securities. Commissions paid in selling securities, *when such commissions are not an ordinary and necessary business expense,* are an offset against the selling price." (Italics supplied.)

The italicized portion of the quoted Regulation first appeared in Article 282, Regulations 77, adopted under the Revenue Act of 1932, but has continued unchanged through the successive revisions of the regulations and is now contained in Section 19.24-2 Regulations 103.

From the quoted provisions of the regulations it is clear that commissions paid in respect of the acquisition and sale of a stock in trade of a business are generally deductible, the only limitation expressed relating to commissions paid in connection with the *purchase and sale* of *securities.* Since in the case of *sales* of *securities,* commissions which are an ordinary and necessary business expense are exempted from the limitation, it follows petitioner's selling commissions on both *security and commodity* sales are deductible as the Board held.

2. All authority prior to the present decision supported the deductibility of selling commissions on securities and commodities as a business expense.

The Commissioner argued in the Court below and before the Board that selling commissions on *security* sales were a business expense only in the case of dealers, as distinguished from traders. This contention was upheld by the Board in the *Appeal of Robert C. Winmill,* 35 B.T.A. 804, the first case arising after the amendment to the regulations under the 1932 Act, the Board deciding that a trader in *securities* had no right to deduct either purchasing or selling commissions. On the taxpayer's petition for a review, the Circuit Court of Appeals for the Second Circuit, in *Winmill v. Commissioner,* 93 Fed. (2d) 494, reversed the Board, holding both purchasing and selling commissions deductible. After referring to Article 282 of Regulations 77 (identical with Article 24-2 of Regulations 86), the Court said (93 Fed. (2d) 496):

> "If the petitioner's activities in buying and selling amounted to a trade or business, his expenses would be deductible under section 23 (a), 26 U.S.C.A. §23 (a) and note, which allows 'all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.' This would apply to commissions paid in buying and selling securities. No good reason is advanced for a discrimination against dealers in securities. The statute makes no such discrimination."

The Commissioner applied for and was granted a writ of certiorari by this Court limited to a review of the Circuit Court of Appeals ruling on the deducti-

bility of *purchasing* commissions only. Necessarily the decision of this Court in *Helvering v. Winmill,* 305 U.S. 79, 83 L. ed. 52, 59 S. Ct. 45, reversing the Circuit Court of Appeals, was confined to a consideration of *purchasing* commissions, which as has been noted, are treated differently in the regulations. As a result the decision of the Circuit Court of Appeals that *selling* commissions are deductible as a business expense became final and has since been followed by the Board.

While the *Winmill* case was pending, the Board decided the *Appeal of Harry H. Neuberger,* 37 B.T.A. 223, and, on the authority of the decision of the Circuit Court of Appeals, allowed the deduction of both buying and selling commissions by a trader in securities. On the Commissioner's petition to review, *Neuberger v. Commissioner,* 104 Fed. (2d) 649, the Second Circuit reversed as to *buying* commissions but affirmed as to *selling* commissions, adhering to its decision in the *Winmill* case, on the latter point. The *Neuberger* case came before this Court on taxpayer's petition on another point (*Neuberger v. Commissioner,* 311 U.S. 83, 85 L. ed. Adv. Op., p. 16, 61 S. Ct. 97) but the Commissioner did not attempt to secure a review of the question as to the deductibility of selling commissions. Since the *Neuberger* decision, the Board has consistently ruled that *selling commissions* paid by traders in *securities* and in *commodities* are deductible. *Cf Appeal of George W. Covington,* 42 B.T.A. 601, (reversed by the Circuit Court of Appeals, Fifth Circuit, in *Commissioner v. Covington,* 120 Fed. (2d) 768), *Appeal of Alice du Pont Ortiz,* 42 B.T.A. 173 (pending

in the Third Circuit), *Appeal of Bernon S. Prentice,* decided December 6, 1940, unreported memorandum opinion (pending in the Third Circuit), *Appeal of Estate of C. Perry Beadleston, deceased,* decided March 24, 1941, unreported memorandum opinion, (pending in the Second Circuit), *Appeal of Roland L. Taylor, Trustee,* 44 B.T.A. No. 61, *Appeal of Ray L. Skofield,* decided May 17, 1941, unreported memorandum decision.

The Circuit Court of Appeals for the Ninth Circuit declined to follow the decisions of the Circuit Court of Appeals for the Second Circuit in the *Winmill* and *Neuberger* cases on two grounds, viz.: (1) that selling commissions were not a necessary business expense of *traders* as distinguished from dealers, and (2) that the Court found "no compelling reason * * * for treating purchasing commissions, concededly nondeductible as expenses, differently from selling commissions." These two grounds will be analyzed and answered in order.

3. Deductibility of selling commissions as business expense cannot be restricted to dealers.

As will have been noted, the applicable statutory provisions and regulations make no attempt to limit the deduction of selling commissions to any specific business. Regulations 86, Article 24-2 applies only to selling commissions on *securities,* whereas the petitioner's business also included sales of *commodities,* but even as to security sales, it expressly exempts from its limitations, selling commissions which are

"an ordinary and necessary business expense." The Board found that "petitioner was engaged in the business of purchasing and selling stocks, bonds and commodities for profit" (R. 24), that "he paid to brokers selling commissions in connection with such sales" (R. 24) and concluded "that selling commissions are allowable deductions." (R. 26.) These findings and the conclusions drawn by the Board would seem to determine the question since the evidence upon which they were based was not brought up. However, the Commissioner successfully argued to the Circuit Court of Appeals, as a matter of law, that since the Board referred to petitioner as a *trader*, the commissions could not be an ordinary and necessary expense of such business, but only of the business of a *dealer*.

Article 22 (c)-5, Regulations 86, defines a "dealer in securities" as "a merchant of securities * * * with an established place of business, regularly engaged in the purchase of securities and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom. * * * Taxpayers who buy and sell or hold securities for investment or speculation, irrespective of whether such buying or selling constitutes the carrying on of a trade or business * * * are not dealers in securities within the meaning of this rule." The article is otherwise devoted to providing for the permissive use of inventories by dealers in securities and in no wise suggests that they are authorized to make a different treatment of selling commissions than traders in securities.

The only support for the Commissioner's position is found in G.C.M. 15430, XIV-2 Cumulative Bulletin 59, which briefly holds that selling commissions are a necessary business expense only where accounting practices make it difficult or impracticable to charge such commissions against individual sales, that such difficulty or impracticability can arise only in the case of dealers and therefore that such commissions are deductible only by that class. Regardless of the propriety of restricting business expenses by the ease or difficulty of accounting practices, the applicability of the memorandum to the present case rests entirely on the Commissioner's *ipse dixit,* since the record is devoid of any evidence of the accounting practices of dealers as distinguished from those of traders.

There seems to be no fundamental distinction, so far as commissions are concerned, between dealers and traders. Both are in the business of buying and selling for profit. The dealer apparently deals directly with his customers, the trader only through a broker. It is difficult to see where a dealer, within the strict definition of Article 22 (c)-5, would have any "selling commissions", since if he ceased to deal directly with his customers and sold through a broker he would cease to be a dealer.

The opinion of the Circuit Court of Appeals refers to the *regulations* as seeming to indicate that the modifying clause of Article 24-2 applies only to "dealers in securities." (119 Fed. (2d) 671, R. 61.) However, as already noted, this inference can only be drawn from the General Counsel's Memorandum. This Court has

pointed out that these memoranda "have none of the force or effect of Treasury decisions and do not commit the Department to any interpretation of the law." *Helvering v. New York Trust Co.*, 292 U.S. 455, 468, 78 L. ed. 1361, 1368, 54 S. Ct. 806. It is submitted that the regulations themselves making no discrimination as to the deductibility of selling commissions as between dealers and traders, there is no authority for such discrimination merely on a real or fancied accounting difficulty.

It should also be noted that G.C.M. 15430 is concerned with sales of *securities*, as is Article 24-2, and furnishes no authority for a denial of selling commissions on sales of *commodities*, both of which are involved in the present case.

4. Decision in Helvering v. Union Pacific Co. does not require holding that selling commissions are not deductible.

While giving considerable weight to the assumed distinction between dealers and traders, the Court below concludes its opinion with a discussion of the *Winmill* and *Neuberger* cases and the case of *Helvering v. Union Pacific Railroad Company*, 293 U.S. 282, 79 L. ed. 363, 55 S. Ct. 165, and says (119 Fed. (2d) 672, R. 64):

> "No compelling reason, however, presents itself to us for treating purchasing commissions, concededly non-deductible as expenses, differently from selling commissions. If the purchase commissions are to be regarded as a part of the cost of the securities, then, logically, the selling commissions should be considered as an offset against the sale price. * * * The Supreme Court has never

passed squarely upon the precise question here before us, but it has shown a disposition to adhere to the reasoning expressed in the *Union Pacific* case, supra, and until that language, heretofore quoted, is repudiated or overruled, we feel obliged to hold that selling commissions, except in the case of a dealer in securities, are not deductible as expenses, but must be considered as an offset against selling prices."

This Court, in its decision in the *Winmill* case, quoted with approval from the decision in *Helvering v. Union Pacific Railroad Company,* a statement to the effect that the consistent treatment by the regulations of commissions paid for marketing bonds not as items of current expense but as deductions from the proceeds of sale, coupled with the reenactment of the statutory provisions without change, had the effect of establishing that treatment as law and so held that the regulations required the disallowance of purchasing commissions on securities as an item of expense. In so holding, the Court said, in response to the suggestion of inconsistency between that result and the provision in Regulation 77, Article 121 (Reg. 86, Art. 23 (a)-1) including "commissions" among items of business expenses:

> "Special provisions limit the application of those of a broad and general nature relating to the same subject. The special designation of security purchase commissions as a 'part of the cost price of such securities' contained in Article 282 evinces the clear intent to withdraw that special type of commission from the general classification of Article 121." (305 U.S. 83; 83 L. ed. 55; 59 S. Ct. 45.)

This very line of reasoning compels the conclusion that the Circuit Court of Appeals for the Second Circuit and the Board are right in allowing selling commissions as a business expense, since the *special provision* of Article 24-2, (Reg. 77, Art. 282) requiring purchasing commissions to be added to the cost of securities purchased and selling commissions to be deducted from the selling price of such securities, *expressly excludes from the requirement as to selling commissions when they are an ordinary and necessary business expense.* This has the effect of eliminating the special provisions of Article 24-2 from consideration in determining whether or not such selling commissions are deductible, and they thereby fall in the general classification of commissions deductible under Section 23 (a)-1. Applying to this situation this Court's reasoning in the *Union Pacific* and *Winmill* cases, it necessarily follows that selling commissions are a business expense. The regulations, commencing with the 1932 Act, having consistently so treated such commissions, and the pertinent provisions of the 1932 Act having been reenacted in the Revenue Act of 1934 and subsequent Revenue Acts, such treatment is "deemed to have received congressional approval and have the effect of law." (305 U.S. 83, 83 L. ed. 55, 59 S. Ct. 47.)

It should also be noted that Article 24-2 and G.C.M. 15430 apply only to sales of securities and that the selling commissions found by the Board to be deductible by petitioner as a business expense include both commissions on sales of securities and commissions on

sales of commodities. (R. 24.) The limiting provisions of Article 24-2, applying only to sales of securities, the general classification of Article 23 (a)-1 should apply to sales of commodities and such commissions must be allowed as a business expense under the authority of the latter regulation regardless of the effect of the regulations relating to commissions on sales of securities. As the Board's findings make no segregation as between commissions paid on security or commodity sales, and the Commissioner did not bring up a record from which such segregation could be made, it is obvious that the Board's decision must be sustained if commissions on the sales of either securities or commodities are deductible as a business expense.

B. BOARD'S DECISION ON 1934 APPEAL CANNOT BE AFFIRMED ON GROUND NOT CONSIDERED BY CIRCUIT COURT OF APPEALS.

Although the Board found for petitioner on the deductibility of selling commissions as a business expense, it refused to take them into consideration in determining petitioner's liability for 1934 on the ground that any claim for a refund of taxes on account thereof was barred by section 322 of the Revenue Act of 1934. Petitioner sought a review of this decision by the Circuit Court of Appeals but that Court declined to consider it, basing its affirmance on its conclusion that the commissions were not items of business expense.

The contention as to 1934 was briefly that as petitioner had filed a valid and timely claim for refund

for income tax paid for that year which the Commissioner had attempted to offset by other claimed errors, petitioner was authorized to have considered by the Board in determining his income tax liability, any errors entering into its determination and properly assigned in the proceeding, even though the pleading assigning such error had been filed after the expiration of the time for filing a refund claim. Petitioner contends that the limitation contained in section 322, applies only after the Board had found that there had been an overpayment of income tax for a given year, in which event the amount refundable is limited to the portion of the overpayment covered by a timely and valid refund claim.

To be specific, if petitioner is entitled to deduct selling commissions paid in 1934, he has overpaid his income tax for that year by $15,122.56. The portion of that amount refundable, however, is limited to $4,087.61, the amount covered by a timely and valid refund claim based on petitioner's failure to deduct on his return an amount paid for stamp taxes. The Board, however, limited the refund to $2,816.72.

The point will not be further elaborated in this brief, since, if this Court holds that selling commissions are deductible as a business expense, the correctness of the Board's decision as to 1934, will be a matter for the consideration of the Circuit Court of Appeals when the cause comes again before it.

Cities Service Oil Co. v. Dunlap, 308 U.S. 208, 212; 84 L. ed. 196, 198; 60 S. Ct. 201, 203;
Helvering v. Fuller, 310 U.S. 69, 76; 84 L. ed. 1082, 1086, 60 S. Ct. 784, 787.

CONCLUSION.

Petitioner's application for writs of certiorari to review the decision of the Circuit Court of Appeals for the Ninth Circuit that selling commissions are not a deductible expense of one engaged in the business of buying and selling securities and commodities should be granted for the following reasons:

First: A direct conflict exists between that decision and the decisions of the Circuit Court of Appeals for the Second Circuit in the *Winmill* and *Neuberger* cases.

Second: The question as to the deductibility of selling commissions as a business expense has never been determined by this Court and should be authoritatively decided since it arises under all of the Revenue Acts commencing with the Revenue Act of 1932 and has been the subject of numerous decisions by the Board of Tax Appeals.

Third: Under a proper reading of the applicable provisions of the Revenue Acts and the Regulations, selling commissions on securities and commodities are proper deductions by one engaged in the business of buying and selling securities and commodities for profit.

Dated, San Francisco, California,
August 27, 1941.

Respectfully submitted,
WALTER SLACK,
Attorney for Petitioner.